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18 UNITED STATES DISTRICT COURT  
19 SOUTHERN DISTRICT OF CALIFORNIA

20 COUNCIL ON AMERICAN-ISLAMIC  
21 RELATIONS, CALIFORNIA; EDGAR  
22 HOPIDA,

23 Plaintiffs,

24 v.

25 FEDERAL BUREAU OF INVESTIGATION;  
26 DEPARTMENT OF JUSTICE,

27 Defendants.

Case No.

09CV0823 IEG

CAB

COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF: FAILURE  
TO COMPLY WITH THE  
FREEDOM OF INFORMATION  
ACT

28 INTRODUCTION

1. Through counsel, the Council on American-Islamic Relations, California and Edgar Hopida bring this civil action to compel the Federal Bureau of Investigation and the Justice Department to respond to their requests under the Freedom of Information Act, perform an adequate search for records responsive to their requests, and comply with the other applicable provisions of the Act.

**THE PARTIES**

2. Plaintiff Council on American-Islamic Relations, California (CAIR) is part of a national non-profit, grassroots membership organization that was established to promote a positive image of Islam and Muslims in the United States. CAIR's mission is to enhance the understanding of Islam, encourage dialogue, protect civil liberties, empower American Muslims, and build coalitions that promote justice and mutual understanding. CAIR maintains a website at <http://www.cair.com> that publishes and disseminates information of public concern, at no charge to the public, on numerous topics, including but not limited to prevention of terrorism, protection of civil rights, legislative issues, and current events. The office of CAIR's San Diego Chapter is located at 7710 Balboa Avenue, Suite 217, San Diego, CA 92111, within the venue of this Court.

3. Plaintiff Edgar Hopida is the Public Relations Director of the San Diego chapter of CAIR. Mr. Hopida is a frequent public speaker on issues relating to Islam and Muslims in America at conferences, interfaith gatherings, and to the media. Mr. Hopida resides in San Diego County, CA, within the venue of this Court.

4. Defendant Federal Bureau of Investigation is an agency of the United States government within the meaning of 5 U.S.C. § 552(f)(1).

5. Defendant United States Department of Justice is an agency of the United States government within the meaning of 5 U.S.C. § 552(f)(1). The DOJ is made up of several agencies, including the FBI.

**JURISDICTION AND VENUE**

6. This Court has subject matter jurisdiction over the claims in this action pursuant to 28 U.S.C. § 1331 because they arise under the laws of the United States, in particular the Freedom of Information Act (FOIA) (5 U.S.C. § 552). FOIA itself also has a specific provision providing for this Court's subject matter jurisdiction, namely 5 U.S.C. § 552(a)(4)(B).

7. Venue is proper in the United States District Court for the Southern District of California pursuant to 28 U.S.C. § 1391(e) and/or 5 U.S.C. § 552(a)(4)(B).

8. This Court has the power to grant declaratory relief in this action pursuant to 28 U.S.C. §§ 2201 and 2202 and Federal Rule of Civil Procedure 57.

9. This Court has the power to grant injunctive relief in this action pursuant to 5 U.S.C. § 552(a)(4)(B) and Federal Rule of Civil Procedure 65. It also has the power to issue any writ necessary or appropriate in aid of its jurisdiction over this case pursuant to 28 U.S.C. § 1651.

## STATUTORY FRAMEWORK

10. The Freedom of Information Act mandates disclosure of records held by a federal agency, in response to a request for such records by a member of the public, unless the records fall within certain narrow statutory exemptions.

11. The basic purpose of FOIA is to enable the public to hold the government accountable for its actions, through transparency and public scrutiny of government operations and activities. Through access to government information, FOIA helps the public better understand the government, thereby enabling a vibrant and functioning democracy.

12. Any member of the public may request records of a government agency under FOIA. An agency that receives a FOIA request must respond in writing to the requester within 20 business days after the receipt of such request. 5 U.S.C. § 552(a)(6)(A)(I). In its response, the agency must inform the requester whether or not it intends to comply with the request, provide reasons for its determination, and inform the requester of her right to appeal the determination. *Id.*

13. A FOIA requester who has been denied records may appeal the denial to the agency. An agency must make a determination on the appeal within twenty business days after the receipt of such appeal. 5 U.S.C. § 552(a)(6)(A)(ii).

14. A FOIA requester is deemed to have exhausted his administrative remedies if the agency fails to comply with the statutory time limits for responding a request or resolving an administrative appeal, which is to say he may immediately proceed to federal court and seek relief there. 5 U.S.C. § 552(a)(6)(C)(i).

1           15.     FOIA requires an agency to timely disclose all records responsive to a FOIA  
2 request that do not fall within nine narrowly-construed statutory exemptions. 5 U.S.C.  
3 § 552(a)(3)(A); § 552(b)(1)-(b)(9).

4           16.     FOIA also requires an agency to make a reasonable search for records  
5 responsive to a FOIA request. *Zemansky v. Environmental Protection Agency*, 767 F.2d 569,  
6 571 (9th Cir. 1985).

7           17.     FOIA further requires each agency to provide "expedited processing" of  
8 requests "in cases in which the person requesting the records demonstrates a compelling  
9 need." 5 U.S.C. § 552(a)(6)(E)(i)(I). There is always a "compelling need" when the request  
10 is "made by a person primarily engaged in disseminating information" and there is  
11 "urgency to inform the public concerning actual or alleged Federal Government activity."  
12 5 U.S.C. § 552(a)(6)(E)(v)(II); 28 C.F.R. § 16.5(d)(1)(ii). The Justice Department's regulations  
13 also provide for expedited processing if the request involves "[a] matter of widespread  
14 and exceptional media interest in which there exist possible questions about the  
15 government's integrity which affect public confidence." 28 C.F.R. § 16.5(d)(1)(iv).

16           18.     The agency is required to determine whether expedited processing shall be  
17 made, and provide notice of that determination, with 10 days after the date of the request.  
18 5 U.S.C. § 552(a)(6)(E)(ii)(I); 28 C.F.R. § 16.5(d)(4).

19           19.     FOIA also contains a number of limitations on the fees and costs an agency  
20 may charge for responding to a request. For example, when the request is made by "a  
21 representative of the news media" and the records "are not sought for commercial use"  
22 then "fees shall be limited to reasonable standard charges for document duplication."  
23 5 U.S.C. § 552(a)(4)(A)(ii)(II). Likewise, documents must be provided to anyone "without  
24 any charge" or at a reduced charge "if disclosure of the information is in the public interest  
25 because it is likely to contribute significantly to public understanding of the operations or  
26 activities of the government and is not primarily in the commercial interest of the  
27 requester." 5 U.S.C. § 552(a)(4)(A)(iii).

20. Once a requester files a complaint, the District Court has jurisdiction to enjoin the agency from withholding records and to order the production of records that are subject to disclosure. 5 U.S.C. § 552(a)(4)(B). The Court also has jurisdiction to review a request for expedited processing, *see* 5 U.S.C. § 552(a)(6)(E)(iii), and a request for waiver of fees, *see* 5 U.S.C. § 552(a)(4)(A)(vii), when the agency fails to act on the requests in a timely manner.

## STATEMENT OF FACTS

### A. Plaintiffs' Initial Request

21. On July 14, 2008, the Plaintiffs, through counsel, mailed and faxed a request under the Freedom of Information Act to the FBI and the Department of Justice. A copy of that request is attached as Exhibit A to this complaint and is incorporated by reference here.

22. The Plaintiffs' request was prompted by a May 22, 2008 article in the San Diego Union-Tribune. The article reported on a security breach at Camp Pendleton's Strategic Technical Operations Center. Staff at the Center had been stealing classified surveillance files and giving them to local law enforcement agencies and defense contractors. Some of the stolen files indicated that the Islamic Center of San Diego, along with other mosques in Los Angeles, were being monitored by a surveillance program targeting Muslim groups. The article provided no more detail on the program. A copy of the article is available at <http://www.signonsandiego.com/news/military/20080522-9999-1n22theft.html> (last visited Mar. 10, 2009), and is attached as Exhibit B.

23. The request seeks information and documents relating to a number of questions of public concern. Was surveillance conducted on law-abiding Muslim residents of Southern California based solely on their religion? What was the extent of the surveillance? Is it still ongoing? Who authorized it and why? Did any of the surveillance violate federal law or the Constitution? Was information gathered through the program unlawfully shared with private contractors or local law enforcement? Was local law enforcement itself involved in unlawful surveillance? What risks do mass-surveillance

1 programs pose to citizens? What procedures and protections can be implemented to  
2 prevent future security breaches like those at Camp Pendleton from undermining national  
3 security and threatening the safety of residents and citizens unlawfully monitored?  
4 Answering these questions requires more information. FOIA was enacted specifically to  
5 give the public access to just such information.

6 24. The plaintiffs' request was carefully targeted to uncover information from  
7 the FBI, the National Joint Terrorism Task Force, or any other Joint Terrorism Task Force  
8 about any surveillance that had been conducted related to any of the plaintiffs, in order to  
9 answer the questions in the previous paragraph, among others.

10 25. The plaintiffs sought expedited processing of their request. They explained  
11 that their request implicates matters of urgent public concern, including the potential that  
12 the FBI or Joint Terrorism Task Force are monitoring or infiltrating religious organizations.  
13 Such activity might infringe the public's freedoms of religion, speech, association, and  
14 privacy, in violation of the First, Fourth, Fifth, and Fourteenth Amendments to the  
15 United States Constitution. It is urgent that potential Constitutional violations are  
16 immediately exposed and stopped.

17 26. In connection with their request for expedited processing, the plaintiffs also  
18 explained that they are primarily engaged in disseminating information. For example,  
19 CAIR maintains a website that publishes information of public concern at no charge on  
20 topics including the prevention of terrorism, protection of civil rights, legislative issues,  
21 and current events. And Mr. Hopida, on behalf of CAIR's San Diego Chapter, regularly  
22 engages in public speaking and discussion with the media on these or similar issues.

23 27. Plaintiffs explained that the records covered by their request related to a  
24 matter of widespread and exceptional media interest, as evidenced by over 30 articles  
25 discussing surveillance of Muslims that have appeared in major newspapers over the past  
26 few years. And the request relates to possible questions about the government's integrity  
27 which affect public confidence because it seeks information regarding possible violations  
28 of Constitutional rights and targeting of groups based solely on religion.

1           28.     The plaintiffs' request also sought a waiver of search and review fees because  
2 they are not seeking the information for a commercial purpose and intend to disseminate  
3 the information gathered by the Request to the public at no cost. In addition, the ACLU  
4 Foundation of San Diego & Imperial Counties, which represented the Requestors, sought a  
5 limitation of fees because it is a non-profit organization that disseminates information  
6 through various media outlets.

7           29.     Finally, the plaintiffs' request sought a waiver or reduction of all costs  
8 because the information request was not for commercial use, will be disseminated to the  
9 public at no cost, and disclosure of the information is in the public interest and may  
10 contribute to public understanding of the FBI and Joint Terrorism Task Force policies and  
11 practices regarding surveillance and infiltration of religious groups.

12           30.     The FBI sent form letters regarding each plaintiff's request on July 18, 2008  
13 acknowledging that the request had been received. The letters did not substantively  
14 respond to any part of the plaintiffs' request. They did not indicate whether or not the  
15 agency would comply with the request. They also did not address the requests for  
16 expedited processing or a waiver of fees. Copies of these three letters are attached as  
17 Exhibit C.

18 **B.     The FBI's response to Mr. Hopida**

19           31.     On July 21, 2008, the FBI sent a letter indicating that no records responsive to  
20 his request had been located by a search of the "automated indices" of "main files in the  
21 central records system at FBI Headquarters and the San Diego Field Office." It informed  
22 Mr. Hopida he could file an administrative appeal within 60 days of the letter's date. A  
23 copy of this letter is attached as Exhibit D.

24           32.     Mr. Hopida timely filed an administrative appeal on September 8, 2008  
25 challenging the adequacy of the FBI's search. In particular, the appeal noted that a search  
26 of the "main files in the central records system" was "not reasonably calculated to uncover  
27 all relevant documents" responsive to Mr. Hopida's requests. The search excluded  
28 "reference" files, such as electronic surveillance files or indices (for example, the Electronic



1 Surveillance index, or ELSUR system), even though many of the items in Mr. Hopida's  
2 request sought documents regarding the FBI's surveillance activities. At a minimum, then,  
3 the search should have included ELSUR, as well as any other files or indices likely to  
4 contain responsive records. A copy of the appeal is attached as Exhibit E.

5 33. By letter dated October 28, 2008, the Associate Director of the Office of  
6 Information and Privacy for the Department of Justice responded to the administrative  
7 appeal, stating, "I am remanding [Mr. Hopida's] request for a further search for  
8 responsive records. If the FBI locates records, it will send any and all releasable records to  
9 you directly." The letter did not advise that any further administrative appeals were  
10 required from the Associate Director's decision. A copy of the letter is attached as  
11 Exhibit F.

12 34. On February 13, 2009, the FBI sent a letter regarding Mr. Hopida's request  
13 that stated, "Currently the FBI is searching for, retrieving, scanning, and evaluating files  
14 that may be responsive to your request. . . . Once your files have been evaluated as  
15 potentially responsive, your request will be forwarded to the 'perfected backlog,' where  
16 your request will wait for assignment to an analyst." A copy of the letter is attached as  
17 Exhibit G.

18 35. In the four months since October 28, 2008, the FBI has not informed  
19 Mr. Hopida whether it has located any responsive records. This is far in excess of the  
20 20-day response period for a FOIA request contemplated by the statute.

21 **C. The FBI's response to CAIR**

22 36. On August 11, 2008, the FBI sent a letter regarding CAIR's request indicating  
23 that it has located approximately 805 pages "which are potentially responsive to your  
24 request." The letter did not indicate if any of the pages would actually be produced, nor  
25 did it explain when the FBI would decide what pages to produce. The letter also did not  
26 indicate what files or indices had been searched, making it impossible to determine  
27 whether the scope of the search was adequate. A copy of the letter is attached as  
28 Exhibit H.



37. The August 11 letter did not respond to CAIR's request for expedited processing or a waiver of fees. CAIR noted these deficiencies in a follow-up letter to the FBI on August 18, which is attached as Exhibit I.

38. CAIR has not received any further response from the FBI since the August 11 letter. The 20-day statutory deadline under FOIA for the FBI to inform CAIR whether it will actually comply with the request has long passed.

**CLAIM FOR RELIEF: Violation of FOIA and Justice Department Regulations**

39. Plaintiffs reallege and incorporate, as though fully set forth herein, each and every allegation contained in the above paragraphs.

40. Defendants' acts and failures to act with respect to Plaintiffs' FOIA requests violate the FOIA in several respects. Specifically, the FBI and/or the Justice Department:

- a) failed to make an adequate search for records responsive to Plaintiffs' FOIA request, in violation of 5 U.S.C. § 552(a)(3)(A), *Zemansky v. Environmental Protection Agency*, 767 F.2d 569, 571 (9th Cir. 1985);
- b) failed to promptly release the responsive records sought by Plaintiffs, in violation of 5 U.S.C. § 552(a)(3)(A);
- c) failed to expedite the processing of Plaintiffs' FOIA request, in violation of 5 U.S.C. § 552(a)(6)(E)(iii);
- d) failed to respond within the statutory time limits to Plaintiffs' FOIA requests, in violation of 5 U.S.C. § 552(a)(6)(A)(I); and
- e) failed to respond to Plaintiffs' request for a waiver of fees, in violation of 5 U.S.C. §§ 552(a)(4)(A)(ii)(II), 552(a)(4)(A)(iii), and 552(a)(4)(vii).

41. The foregoing acts and failures to act by Defendants also violated the Justice Department's FOIA regulations at 28 C.F.R. Part 16; §§ 16.5(d), 16.6, 16.11.

42. Defendants' failure to comply with applicable deadlines excuses any requirement for Plaintiffs to exhaust administrative remedies before filing suit.

43. Injunctive relief is authorized by 5 U.S.C. § 552(a)(4)(B).

**PRAYER FOR RELIEF**

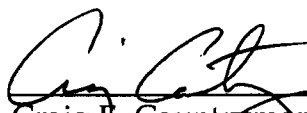
Wherefore, Plaintiffs pray that this Court:

- a) Order Defendants to process immediately and expeditiously Plaintiffs' FOIA request and, upon such processing, to make available the requested records to Plaintiffs and waive all processing fees;
- b) Order Defendants to conduct an adequate search with respect to Mr. Hopida's FOIA request and to make available any requested records found as a result of the more thorough, statutorily required search;
- c) Order Defendants to conduct an adequate search with respect to CAIR's FOIA request and to make available any requested records found;
- d) Declare that Defendants' failure to disclose the records requested by Plaintiffs is unlawful;
- e) Award Plaintiffs costs and reasonable attorney fees incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E);
- f) Grant such other relief as the Court may deem just and proper.

Dated: April 20, 2009

FISH & RICHARDSON P.C.

By:

  
Craig E. Countryman (SBN 244601)  
Email: [countryman@fr.com](mailto:countryman@fr.com)

ACLU FOUNDATION OF SAN DIEGO &  
IMPERIAL COUNTIES

David Blair-Loy  
Sean Riordan

Attorneys for Plaintiffs

**PROOF OF SERVICE**

I am employed in the County of San Diego. My business address is Fish & Richardson P.C., 12390 El Camino Real, San Diego, California 92130. I am over the age of 18 and not a party to the foregoing action.

On April 20, 2009, I caused a copy of the following document(s):

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF: FAILURE TO COMPLY WITH THE FREEDOM OF INFORMATION ACT**

to be served on the interested parties in this action as follows:

Eric Holder U.S. Attorney General, U.S. Department Of Justice, Main Building, Room 51 10 <sup>th</sup> and Constitution Ave. N.W. Washington, D.C. 20530	<i>Served by certified U.S. mail: Such correspondence was deposited, postage fully paid, with the United States Postal Service on the same day in the ordinary course of business.</i>
Federal Bureau of Investigation J. Edgar Hoover Building 935 Pennsylvania Avenue, NW Washington, D.C. 20535-0001	<i>Served by certified U.S. mail: Such correspondence was deposited, postage fully paid, with the United States Postal Service on the same day in the ordinary course of business</i>
U.S. Department of Justice 950 Pennsylvania Avenue, NW Washington, DC 20530-0001	<i>Served by certified U.S. mail: Such correspondence was deposited, postage fully paid, with the United States Postal Service on the same day in the ordinary course of business</i>
United States Attorney, Southern District of California Federal Office Building 880 Front Street, Room 6293 San Diego, CA 92101	<i>Served by Personal Hand Delivery: Such envelope was delivered by hand to the offices of the addressee.</i>

I am readily familiar with the business practice at my place of business for collection and processing of correspondence for personal delivery, for mailing with U.S. Postal Service, for facsimile, and for overnight delivery by Federal Express, Express Mail, or other overnight service.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct. Executed on April 20, 2009, at San Diego, California.

  
Maritza E. DeJesus



COPY



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By Facsimile and Mail

July 14, 2008

Federal Bureau of Investigation  
Record Information/Dissemination Section (RIDS)  
170 Marcel Drive  
Winchester, VA 22602-4843  
Facsimile: (540) 868-4995

Director of Public Affairs  
Office of Public Affairs  
U.S. Department of Justice  
Room 1128  
950 Pennsylvania Avenue, NW  
Washington DC 20530-0001

Federal Bureau of Investigation  
San Diego Division  
9797 Aero Drive  
San Diego, CA 92123

Re: Request Under Freedom of Information Act and Privacy Act

Dear Sir/Madam:

This letter constitutes a request for records made pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a, by and on behalf of the Council on American Islamic Relations (San Diego chapter), the Islamic Center of San Diego and Edgar Hopida (collectively, "the Requestors"). See attached requestors' authorizations.

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The Requestors make this request for records because of their concerns about disproportionate targeting of Muslim Americans and Muslim organizations

### REQUESTORS

1. The Council on American-Islamic Relations (CAIR) is a non-profit, grassroots membership organization that was established to promote a positive image of Islam and Muslims in the United States. CAIR's San Diego chapter is based in San Diego, California. CAIR's mission is to enhance the understanding of Islam, encourage dialogue, protect civil liberties, empower American Muslims, and build coalitions that promote justice and mutual understanding. CAIR maintains a website at [www.cair.com](http://www.cair.com) that publishes and disseminates information of public concern, at no charge to the public, on numerous topics, including but not limited to prevention of terrorism, protection of civil rights, legislative issues, and current events.
2. The Islamic Center of San Diego is a mosque located in San Diego, California that serves the religious needs of the Muslim communities of the San Diego area.
3. Edgar Hopida is the Public Relations Director of the San Diego chapter of CAIR. Mr. Hopida is a frequent public speaker on issues relating to Islam and Muslims in America at conferences, interfaith gatherings, and to the media.

### BACKGROUND

On May 22, 2008, the San Diego Union-Tribune reported on a major security breach at the Strategic Technical Operations Center at Camp Pendleton, in which staff at the Center — including its chief — operated a ring that, for years, stole surveillance files to give to local law enforcement and perhaps to private defense contractors for financial gain.<sup>1</sup>

The report indicates "a massive number of files were taken from Camp Pendleton, including those . . . [classified] Top Secret, Special Compartmentalized information." The report also revealed previously unconfirmed programs of surveillance of mosques in San Diego and Los Angeles. Some of the records concern the Islamic Center of San Diego, which was "monitored by a federal surveillance program targeting Muslim groups."

These revelations demonstrate the perils of mass data-collection programs and raise immediate concerns for the public, including the following:

- Whether and to what extent is surveillance being conducted and information compiled on law-abiding Muslim residents and citizens of

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<sup>1</sup> See Rick Rogers, *Records Detail Security Failure in Base File Theft*, SAN DIEGO UNION-TRIBUNE (May 22, 2008), available at <http://www.signonsandiego.com/news/military/20080522-9999-1n22theft.html>.

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Southern California, based solely on their choice of religion? Who authorized this surveillance and why?

- To what extent has information on residents' lawful activities or unverified suspicions about residents been collected without any indication of criminal activity, in violation of federal law, and unlawfully shared between government agencies or with private contractors? How is such unlawfully obtained surveillance being used in ways that affect law-abiding residents and citizens?
- To what extent has local law enforcement engaged in unlawful surveillance or unlawfully obtained access to classified files?
- What risks do mass-surveillance programs pose to citizens, and what procedures and protections can be implemented to prevent future security breaches like those at Camp Pendleton from undermining national security and threatening the safety of residents and citizens unlawfully monitored?
- Whether and to what have United States military forces participated in domestic surveillance operations in violation of the Posse Comitatus Act, 18 U.S.C. § 1385?

#### REQUEST FOR RECORDS

The Requestors seek disclosure of any records created from January 1, 2001 to the present, which were prepared, received, transmitted, collected and/or maintained by the FBI, the National Joint Terrorism Task Force, or any Joint Terrorism Task Force relating or referring to the following:

1. Any records relating or referring to the Requestors, including but not limited to records that document any collection of information about, monitoring, surveillance, observation, questioning, interrogation, investigation and/or infiltration of any of the Requestors or their activities;
2. Any records authorizing, ordering, instructing, or agreeing to collect information about, monitor, conduct surveillance of, observe, question, interrogate, investigate, and/or infiltrate any of the Requestors;
3. Any records relating or referring to how, why or when any of the Requestors was selected for collection of information, monitoring, surveillance, observation, questioning, interrogation, investigation, and/or infiltration;



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4. Any records relating or referring to how collection of information about, monitoring, surveillance, observation, questioning, interrogation, investigation, and/or infiltration of any of the Requestors was or will be conducted;
5. Any records relating or referring to the names of any federal, state, or local government agencies participating in any collection of information about, monitoring, surveillance, observation, questioning, interrogation, investigation and/or infiltration of any of the Requestors;
6. Any records relating or referring to the specific role of the National Joint Terrorism Task Force or any local Joint Terrorism Task Force in any collection of information about, monitoring, surveillance, observation, questioning, interrogation, investigation and/or infiltration of any of the Requestors;
7. Any records relating or referring to the specific role of any federal, state, or local government agency participating in any collection of information about, monitoring, surveillance, observation, questioning, interrogation, investigation, and/or infiltration of any of the Requestors;
8. Any records relating or referring to how records about any of the Requestors have been, will be, or might be maintained or used, shared, or disseminated;
9. Any policies or procedures for analyzing records about any of the Requestors;
10. Any policies or procedures for cross-referencing records about any of the Requestors with information contained in any database;
11. Any policies or procedures for cross-referencing records about any of the Requestors with information about any other organizations or individuals;
12. Any policies or procedures for cross-referencing records about any of the Requestors with any other information not covered in numbers 10 and 11 above;
13. Any policies or procedures regarding retention of records about any of the Requestors;
14. Any records referring or relating to the destruction of records about any of the Requestors, including any policies permitting or prohibiting the destruction of records;
15. Any records referring or relating to how records about any of the Requestors were destroyed or might be destroyed in the future;
16. Any policies or procedures in place to protect the privacy of records that refer or relate to the employees, members, and/or board of directors of any of the Requestors;

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17. Any records relating or referring to how, why or when collection of information about, monitoring, surveillance, observation, questioning, interrogation, investigation, and/or infiltration of any of the Requestors was or will be suspended or terminated;
18. Any records referring or relating to the recipient(s) of records or information about any of the Requestors;
19. A complete list of all recipient(s) of data, information, or records regarding any of the Requestors.

### REQUEST FOR EXPEDITED PROCESSING

Expedited processing is warranted because there is "an urgency to inform the public about an actual or alleged federal government activity" by organizations "primarily engaged in disseminating information." 28 C.F.R. § 16.5(d)(1)(ii); *see also* 5 U.S.C. § 552(a)(6)(E)(v)(II).

This request implicates matters of urgent public concern, as discussed above under Background. Any government policies and practices of surveillance and/or infiltration of religious organizations by the FBI and/or JTTF are extremely troubling. Such government activity may infringe upon the public's freedoms of religion, speech, association, and privacy, which are guaranteed by the First, Fourth, Fifth, and Fourteenth Amendments to the United States Constitution. Requests for information bearing upon potential Constitutional violations require an immediate response to cease present violations, prevent future violations, and prevent any chilling effect on public participation in potentially targeted groups and/or activities.

The Requestors are "primarily engaged in disseminating information" under the statute and regulations. 5 U.S.C. § 552(a)(6)(E)(v)(II); 28 C.F.R. § 16.5(d)(1)(ii). Dissemination of information to the public is a critical and substantial component of the Requestors' mission and work. As discussed above, CAIR maintains a website at [www.cair.com](http://www.cair.com) that publishes and disseminates information of public concern, at no charge to the public, on numerous topics, including but not limited to prevention of terrorism, protection of civil rights, legislative issues, and current events. Also, Mr. Hopida, on behalf of CAIR's San Diego chapter, regularly engages in public speaking and discussion with the media on the same or similar issues. Therefore, the Requestors are primarily engaged in disseminating information. *See American Civil Liberties Union v. Department of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (non-profit public interest group that "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience," is "primarily engaged in disseminating information").

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Expedited processing is also warranted because the records relate to "a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." 28 C.F.R. § 16.5(d)(1)(iv). The instant request relates to possible violations of Constitutional rights by federal law enforcement and possible targeting of groups based on religion.

The exceptional media interest in this issue is reflected in widespread news coverage. As noted above, the San Diego Union-Tribune recently ran a special report on this issue, noting that the Islamic Center of San Diego "was monitored by a federal surveillance program targeting Muslim groups."

Similar issues have been of intense public concern for several years. See, e.g., Caroline Dees, In Terror War, U.S. Muslims Wary of American "Outreach," [www.dailytimes.com.pk](http://www.dailytimes.com.pk), May 10, 2006; FBI Town Hall Meeting: With Advisors in Tow, FBI Multicultural Panel Opens Up to Public, Daily Press (Newport News, VA) April 9, 2006; Jonathan S. Landay, FBI Report Shows Agency Monitored Antiwar Group, Philadelphia Inquirer, March 15, 2006; Muslim Groups Seek Answers on Spying, Christian Century, January 24, 2006, Vol. 123, Issue 2; Mosque Members Mistrust Camera, San Jose Mercury News, January 15, 2006; Jerry Seper, Monitoring of Muslims Addressed, Washington Times, January 12, 2006; Muslim Group Wants Gonzales Meeting: MPAC Protesting Reports of Widespread Surveillance and Nuclear Monitoring of American Muslims, The Arab American News, December 31, 2005; Larry Margasak, Muslim Locales in U.S. Tested: Secret Radiation Checks Done Without Warrants, Akron Beacon Journal, December 24, 2005; Richard A. Serrano, Muslims Angered by FBI Radiation Checks at Mosques, Seattle Times, December 24, 2005; Katherine Cocoran, Rights Group Focus on Iranians: Discrimination Cases Reported, San Jose Mercury News, August 4, 2005; Gail Ryall, Civil Rights Groups Contest FBI on Lodi Arrests, People's Weekly World, June 26, 2005; Daily Star Staff, American Arabs Concerned Over FBI's 'October Plan,' [www.dailystar.com.lb](http://www.dailystar.com.lb), October 6, 2004; David Shepardson, FBI Agents Hunt for Terror Leads: Agency Combs Muslim Neighborhoods for Help in Preventing Election Day Attack, The Detroit News, October 1, 2004; Eric Lichtblau, Subpoena Seeks Records About Delegate Lists on Web, NY Times, August 30, 2004, at P10; Alex Bradley and John Mayer, The War at Home: Nationwide Crackdown on Activists Part, [www.saveourliberties.com](http://www.saveourliberties.com), September 2, 2004; Eric Lichtblau, Protestors at Heart of Debate on Security vs. Civil Rights, NY Times, August 27, 2004, at A9; Larry Abramson, FBI Questioning Political Demonstrators, NPR.org; Susan Greene, Activists Decry Pre-Convention Security Tactics: Questions by FBI, The Feds Say They're Trying to Avoid Terror Threats, But Many People Say the Steps Veer Toward Intimidation, The Denver Post, August 26, 2004, at A-08; Eric Lichtblau, F.B.I. Goes Knocking for Political Troublemakers, NY Times, August 16, 2004, at A1; Amy Herder, Teaching the Silent Treatment, The Denver Post, August 8, 2004, at C-01; Jayashri Srikantiah, Few Benefits to Questioning Targeted Groups, San Francisco Chronicle, August 6, 2004; Camille T. Taiara, New F.B.I. Witch-Hunt, San Francisco Bay Guardian, August 4-10, 2004; Kelly Thornton, F.B.I.'s Home Visits Have Some Muslims Feeling Harassed,

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Alienated, Signonsandiego.com, August 4, 2004; Richard Schmitt and Donna Horowitz, FBI Starts to Question Muslims in U.S. About Possible Attacks, latimes.com, July 18, 2004; Karen Abbott, FBI's Queries Rattle Activist, www.rockymountainnews.com, July 27, 2004; Mary Beth Sheridan, Interviews of Muslims to Broaden, www.washingtonpost.com, July 17, 2004; Jeff Eckhoff and Mark Siebert, Group Fights Anti-war Inquiry, The Des Moines Register, February 7, 2004; Jeff Eckhoff and Mark Siebert, Anti-war Inquiry Unrelated to Terror, The Des Moines Register, February 10, 2004, at 1A; Jeff Eckhoff and Mark Siebert, Group Fights Anti-war Inquiry, The Des Moines Register, February 7, 2004; Monica Davey, An Antiwar Forum in Iowa Brings Federal Subpoenas, NY Times, February 10, 2004, at A14; Monica Davey, Subpoenas on Antiwar Protest Are Dropped, NY Times, February 11, 2004, at A18; Michelle Goldberg, A Thousand J. Edgar Hoovers, www.salon.com, February 12, 2004; Michelle Goldberg, Outlawing Dissent, www.salon.com, February 11, 2004; Kerri Ginis, Peace Fresno Seeks Damages, The Fresno Bee, February 28, 2004; Eric Lichtblau, F.B.I. Scrutinizes Antiwar Rallies, www.nytimes.com, November 23, 2003

#### LIMITATION OR WAIVER OF SEARCH AND REVIEW FEES

We request a limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) ("fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by . . . a representative of the news media . . .") and 28 C.F.R. §§ 16.11(c)(1)(i), 16.11(d)(1) (search and review fees shall not be charged to "representatives of the news media."). The information sought in this request is not sought for a commercial purpose. The Requestors include non-profit religious organizations serving the community who intend to disseminate the information gathered by this Request to the public at no cost.

ACLU Foundation of San Diego & Imperial Counties (ACLUF-SDIC) also requests limitation of fees. ACLUF-SDIC is a non-profit organization dedicated to the defense of civil rights and civil liberties. As part of its work, ACLUF-SDIC disseminates information to the public through newsletters, news briefings, "Know Your Rights" documents, and other educational and informational materials. ACLUF-SDIC also disseminates information to individuals, tax-exempt organizations, not-for-profit groups, and members through its website, <http://www.aclusandiego.org/>. In addition, ACLUF-SDIC shares information with the national ACLU office. The ACLU publishes information through multiple outlets including newsletters, action alerts, videos, and other media. ACLU publications are disseminated across the country to individuals and organizations. The ACLU also publishes an electronic newsletter, which is distributed to subscribers by e-mail, and maintains a website of civil rights and civil liberties information at <http://www.aclu.org>.

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### WAIVER OR REDUCTION OF ALL COSTS

We request a waiver or reduction of all costs pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) ("Documents shall be furnished without any charge . . . if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester"); *see also* 28 CFR § 16.11(k). Disclosure of the information sought is in the public interest and will contribute to public understanding of FBI and JTTF policies and practices of surveillance and/or infiltration of religious organizations. The records requested are not sought for commercial use, and the Requestors plan to disseminate the information disclosed through print and other media to the public at no cost, and through meetings with members and affected communities.

In the event a waiver or reduction of costs is denied, please notify me in advance if the anticipated costs exceed \$100.

### CONCLUSION

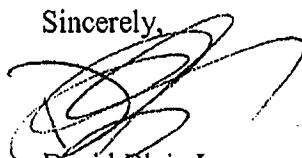
If this request is denied in whole or part, please justify all deletions by reference to specific FOIA exemptions. We expect you to release all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information, or to deny expedited processing or a waiver of fees. We look forward to your reply to the request for expedited processing within ten (10) calendar days, as required under 5 U.S.C. § 552(a)(6)(E)(ii)(I). Notwithstanding your decision on the matter of expedited processing, we look forward to your reply to the records request within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(I).

If you have questions, please contact me at 619.232.2121, ext. 23 or e-mail me at [dblairloy@aclusandiego.org](mailto:dblairloy@aclusandiego.org). Thank you in advance for your timely consideration of this request. Please furnish records as soon as they are identified to the undersigned at:

ACLU Foundation of San Diego & Imperial Counties  
P.O. Box 87131  
San Diego, CA 92138-7131

I certify that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief.

Sincerely,



David Blair-Loy  
Legal Director





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**U-T SPECIAL REPORT**

**Records detail security failure in base file theft**

**By Rick Rogers**

UNION-TRIBUNE STAFF WRITER

**May 22, 2008**

A group suspected of stealing secret files on potential terrorists in San Diego and elsewhere apparently operated with impunity from one of Camp Pendleton's most heavily guarded buildings, newly obtained court records and investigative reports show.

Its members – military reservists and law enforcement officers – allegedly swiped the classified documents from the Strategic Technical Operations Center.

Base officials have acknowledged the center's existence without discussing anything about it, citing national security concerns. But FBI and Navy agents said in reports that Col. Larry Richards, a Marine reservist, and his accomplices had no trouble evading the building's security measures.

Richards was the center's chief.

When not on active military duty, Richards worked as a top specialist for the Los Angeles County Terrorist Early Warning Group, a task force largely made up of members from law enforcement agencies.

While working at Camp Pendleton in January 2004, he escorted two Los Angeles County sheriff's deputies through the center's vaultlike doors, past guards and to the man stealing classified files for them, reports said.

Richards arranged the meeting after learning of his pending deployment to Iraq, investigators said. He found a war buddy to replace him in raiding the center's databases.

His recruit was Gunnery Sgt. Gary Maziarz, an intelligence analyst at the center and a survivor of the Sept. 11, 2001, terrorist attacks in New York City.

Maziarz was the linchpin of the theft group until his arrest in late 2006. He pleaded guilty the next summer and named Richards as the ringleader.

As part of his court-martial plea deal, Maziarz agreed to testify against anyone charged in the case and to not speak with the news media. He is serving a 26-month prison sentence.

Maziarz testified that he acted out of patriotism – to make it easier for federal, military and civilian law enforcement agencies to share information about possible terrorists.

Investigators, though, said some of the suspects might have passed files to defense contractors in hopes of



later being hired by them.

The FBI and military are still investigating Maziarz, Richards, Navy Cmdr. Lauren Martin, Marine Maj. Mark Lowe and former Marine Col. David Litaker. None of the suspects responded to requests for comment.

Government officials also are vetting the backgrounds of participating attorneys ahead of expected charges against the remaining suspects in coming months. Legal proceedings in the case probably will be conducted in private.

"The Marine Corps and the U.S. attorney are hashing out jurisdictional issues and prosecution strategy," said Ed Buice, a spokesman for the Naval Criminal Investigative Service.

*The San Diego Union-Tribune* first wrote about the theft ring in October after obtaining much of the transcript from Maziarz's court-martial.

The newspaper has since received more transcripts, reports from the FBI and naval authorities, and details from people close to the case. Those sources asked not to be identified because the investigation is in progress.

The newly acquired material indicates that Maziarz and other suspects gave investigators self-incriminating evidence. It suggests that a massive number of files were taken from Camp Pendleton, including those with the most confidential classification the government can bestow – Top Secret, Special Compartmentalized Information.

It also details how Maziarz helped funnel the files, hints at a financial motive for the theft and reveals that a mosque in San Diego's Clairemont neighborhood was monitored by a federal surveillance program targeting Muslim groups.

The theft operation began in 2001 or earlier with Richards at the helm, Maziarz testified during his court-martial. It might have stayed undetected had naval agents not stumbled upon classified material while questioning Maziarz for a different crime – stealing Iraq war trophies – at the end of 2006.

In Maziarz's apartment in Carlsbad and a storage locker in Virginia, investigators found more than 100 FBI and Defense Department files. Some documents pertained to surveillance of Muslim communities in Southern California.

"They were looking at specific mosques in Los Angeles and San Diego. The mosque in Clairemont was one," said a source who confirmed some of the files' contents.

That mosque, the Islamic Center of San Diego, is one of 18 houses of worship in the county with prayer services for Muslims, said the Council on American-Islamic Relations.

At his court-martial, Maziarz testified that Richards kept in touch with him during the 2004 deployment in Iraq by talking on a secure, government-issued satellite phone.

Maziarz said he used Richards' logon and password to access confidential computer accounts on the Joint Worldwide Intelligence Communications System and Secret Internet Protocol Router Network.

He also said he regularly obtained and disseminated secret files, such as surveillance reports transmitted by Lauren Martin, an intelligence analyst at U.S. Northern Command headquarters in Colorado Springs, Colo.

The command handles information about suspected terrorism operations nationwide, and Martin was responsible for the region that included Southern California, Maziarz testified.

According to investigators' reports, Richards said in interviews that he cold-called Martin after the Sept. 11 attacks and asked her to supply the Los Angeles Terrorist Early Warning Group with region-specific intelligence. He wanted law enforcement to have more ammunition to build cases against suspected terrorists.

At Maziarz's sentencing hearing in July, Gunnery Sgt. Paul C. Hurst, a security specialist, testified that Maziarz had "taken advantage of known faults within the security system" during wartime, when there weren't enough Marines to monitor the Strategic Technical Operations Center.

"The insider threat is the threat we should be focusing toward," Hurst said. "It's not necessarily al-Qaeda or anyone else."

Maziarz said his group broke laws to minimize the threat of terrorist attacks in Southern California. But federal officials are trying to determine, among other things, whether Richards and others shared anti-terrorism intelligence with defense contractors in exchange for future employment.

Investigators are scrutinizing possible ties between Richards and Kroll Associates, a risk-assessment company with offices in more than 65 cities worldwide. (Kroll's clients have included the city of San Diego, which paid the corporation \$20 million for a 2006 report on its pension and financial scandal.)

Some of Kroll's employees and consultants come from law enforcement or go into that field after leaving the company. A few have had ties to the Los Angeles County Terrorist Early Warning Group.

A Kroll spokesman declined to comment on Richards or the theft case.

The investigative reports also note that agents are running down a possible connection between Richards and MPRI International Group, which provides services to law enforcement agencies and the U.S. Department of Defense. Richards told authorities that MPRI offered him \$300,000 to work in Afghanistan, reports said.

An MPRI spokesman said Richards was never an employee or contract worker with the company. The spokesman wouldn't answer other questions for this story.

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•Rick Rogers: (760) 476-8212; [rick.rogers@uniontrib.com](mailto:rick.rogers@uniontrib.com)

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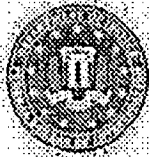
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U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

July 18, 2008

MR. DAVID BLAIR-LOY  
ACLU FOUNDATION OF SAN DIEGO AND IMPERIAL COUNTIES  
POST OFFICE BOX 87131  
SAN DIEGO, CA 92138 7131

Request No.: 1117078-000  
Subject: COUNCIL ON AMERICAN  
ISLAMIC RELATIONS- SAN DIEGO CHAPTER

Dear Mr. Blair-Loy:

- ☒ This acknowledges receipt of your Freedom of Information-Privacy Acts (FOIPA) request to the FBI. The FOIPA number listed above has been assigned to your request.
- ☐ For an accurate search of our records, please provide the complete name, alias, date and place of birth for the subject of your request. Any other specific data you could provide such as prior addresses, or employment information would also be helpful. If your subject is deceased, please include date and proof of death.
- ☐ To make sure information about you is not released to someone else, we require your notarized signature or, in place of a notarized signature, a declaration pursuant to Title 28, United States Code 1746. For your convenience, the reverse side of this letter contains a form which may be used for this purpose.
- ☐ If you want the FBI's Criminal Justice Information System (CJIS) to perform a search for your arrest record, please follow the enclosed instructions in Attorney General Order 556-73. You must submit fingerprint impressions so a comparison can be made with the records kept by CJIS. This is to make sure your information is not released to an unauthorized person.
- ☒ We are searching the indices to our central records system at FBI Headquarters for the information you requested, and will inform you of the results as soon as possible.
- ☐ Processing delays have been caused by the large number of requests received by the FOIPA. We will process your request(s) as soon as possible.

Your request has been assigned the number indicated above. Please use this number in all correspondence with us. Your patience is appreciated.

Sincerely yours,

David M. Hardy  
Section Chief,  
Record/Information  
Dissemination Section  
Records Management Division



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

July 18, 2008

MR. DAVID BLAIR LOY  
ACLU FOUNDATION OF SAN DIEGO AND IMPERIAL COUNTIES  
POST OFFICE BOX 87131  
SAN DIEGO, CA 92138 7131

Request No.: 1117080- 000  
Subject: ISLAMIC CENTER OF SAN DIEGO

Dear Mr. Blair-Loy:

- ☒ This acknowledges receipt of your Freedom of Information-Privacy Acts (FOIPA) request to the FBI. The FOIPA number listed above has been assigned to your request.
- ☐ For an accurate search of our records, please provide the complete name, alias, date and place of birth for the subject of your request. Any other specific data you could provide such as prior addresses, or employment information would also be helpful. If your subject is deceased, please include date and proof of death.
- ☐ To make sure information about you is not released to someone else, we require your notarized signature or, in place of a notarized signature, a declaration pursuant to Title 28, United States Code 1746. For your convenience, the reverse side of this letter contains a form which may be used for this purpose.
- ☐ If you want the FBI's Criminal Justice Information System (CJIS) to perform a search for your arrest record, please follow the enclosed instructions in Attorney General Order 556-73. You must submit fingerprint impressions so a comparison can be made with the records kept by CJIS. This is to make sure your information is not released to an unauthorized person.
- ☐ We are searching the indices to our central records system at FBI Headquarters for the information you requested, and will inform you of the results as soon as possible.
- ☐ Processing delays have been caused by the large number of requests received by the FOIPA. We will process your request(s) as soon as possible.

Your request has been assigned the number indicated above. Please use this number in all correspondence with us. Your patience is appreciated.

Sincerely yours,

David M. Hardy  
Section Chief,  
Record/Information  
Dissemination Section  
Records Management Division





U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

July 18, 2008

MR. DAVID BLAIR-LOY  
ACLU FOUNDATION OF SAN DIEGO AND IMPERIAL COUNTIES  
POST OFFICE BOX 87131  
SAN DIEGO, CA 92138 7131

Request No.: 1117081- 000  
Subject: HOPIA, EDGAR DELROSARIO

Dear Mr. Blair-Loy:

- ☒ This acknowledges receipt of your Freedom of Information-Privacy Acts (FOIPA) request to the FBI. The FOIPA number listed above has been assigned to your request.
- ☐ For an accurate search of our records, please provide the complete name, alias, date and place of birth for the subject of your request. Any other specific data you could provide such as prior addresses, or employment information would also be helpful. If your subject is deceased, please include date and proof of death.
- ☐ To make sure information about you is not released to someone else, we require your notarized signature or, in place of a notarized signature, a declaration pursuant to Title 28, United States Code 1746. For your convenience, the reverse side of this letter contains a form which may be used for this purpose.
- ☐ If you want the FBI's Criminal Justice Information System (CJIS) to perform a search for your arrest record, please follow the enclosed instructions in Attorney General Order 556-73. You must submit fingerprint impressions so a comparison can be made with the records kept by CJIS. This is to make sure your information is not released to an unauthorized person.
- ☒ We are searching the indices to our central records system at FBI Headquarters for the information you requested, and will inform you of the results as soon as possible.
- ☐ Processing delays have been caused by the large number of requests received by the FOIPA. We will process your request(s) as soon as possible.

Your request has been assigned the number indicated above. Please use this number in all correspondence with us. Your patience is appreciated.

Sincerely yours,

David M. Hardy  
Section Chief,  
Record/Information  
Dissemination Section  
Records Management Division







JUL 25 2008

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

July 21, 2008

MR. DAVID BLAIR-LOY  
ACLU FOUNDATION OF SAN DIEGO AND IMPERIAL COUNTIES  
POST OFFICE BOX 87131  
SAN DIEGO, CA 92138 7131

Request No.: 1117081-000  
Subject: HOPIDA, EDGAR DELROSARIO

Dear Mr. Blair-Loy:

This is in response to your Freedom of Information-Privacy Acts (FOIPA) request noted above.

To promptly respond to requests, we concentrate on identifying main files in the central records system at FBI Headquarters and the San Diego Field Office. No records responsive to your FOIPA request were located by a search of the automated indices.

You may file an administrative appeal by writing to the Director, Office of Information and Privacy, United States Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001, within sixty days from the date of this letter. The envelope and the letter should be clearly marked "Freedom of Information Appeal" or "Information Appeal." Please cite the FOIPA number assigned to your request so that it may be easily identified.

Enclosed for your information is a copy of the FBI File Fact Sheet.

Sincerely yours,

A handwritten signature in black ink, appearing to read "D. Hardy", is written over a horizontal line.

David M. Hardy  
Section Chief,  
Record/Information  
Dissemination Section  
Records Management Division

Enclosure

## FBI FILE FACT SHEET

- The primary function of the FBI is law enforcement.  
**The FBI does not keep a file on every citizen of the United States.**
- **The FBI was not established until 1908 and we have very few records prior to the 1920's.**
- **FBI files generally contain reports of FBI investigations of a wide range of matters, including counterterrorism, foreign counter-intelligence, organized crime/drugs, violent crime, white-collar crime, applicants, and civil rights.**
- **The FBI does not issue clearances or nonclearances for anyone other than its own personnel or persons having access to FBI facilities.** Background investigations for security clearances are conducted by many different Government agencies. Persons who received a clearance while in the military or employed with some other government agency should write directly to that entity.
- **An FBI Identification record or "rap sheet" is NOT the same as an FBI "file" - it is simply a listing of information taken from fingerprint cards submitted to the FBI in connection with arrests, federal employment, naturalization, or military service. The subject of a "rap sheet" may obtain a copy by submitting a written request to FBI, CJIS Division, Attn: SCU, Mod. D-2, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306. Each request must have proof of identity which shall consist of name, date and place of birth and a set of rolled-ink fingerprint impressions placed upon fingerprint cards or forms commonly utilized for applicant or law enforcement purposes by law enforcement agencies, plus payment of \$18.00 in the form of a certified check or money order, payable to the Treasury of the United States.**
- **The National Name Check Program (NNCP) conducts a search of the FBI's Universal Index to identify any information contained in FBI records that may be associated with an individual and provides the results of that search to the requesting Federal, State or local agency. For the NNCP, a name is searched in a multitude of combinations and phonetic spellings to ensure all records are located. The NNCP also searches for both "main" and "cross reference" files. A main file is an entry that carries the name corresponding to the subject of a file while a cross reference is merely a mention of an individual contained in a file. The results from a search of this magnitude can result in several "hits" and "idents" on an individual. In each instance where UNI has identified a name variation or reference, information must be reviewed to determine whether it is applicable to the individual in question.**
- **The Record/Information Dissemination Section/Freedom of Information-Privacy Acts (FOIPA) search for records provides copies of FBI files relevant to a FOIPA request for information. FOIPA provides responsive documents to requesters seeking "reasonably described information." For a FOIPA search, the subject name, event, activity, business, or event is searched to determine whether there is an investigative file associated with the subject. This is called a "main file search" and differs from The NNCP search.**

FOR GENERAL INFORMATION ABOUT THE FBI,  
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San Diego, CA 92138-7131  
T/ 619-232-2121  
F/ 619-232-0036  
www.aclusandiego.org

September 8, 2008

Director  
Office of Information and Privacy  
Department of Justice  
1425 New York Ave. NW, Suite 11050  
Washington, DC 20530-0001

Re: Freedom of Information Appeal  
Request No. 1117081-000, Edgar D. Hopida

Dear Sir or Madam:

This letter is written to file an administrative appeal from the letter of David M. Hardy dated July 21, 2008, a copy of which is enclosed, regarding the above-referenced FOIPA request. Also enclosed is a copy of the request itself.

Mr. Hardy's letter states, "we concentrate on identifying main files in the central records system at FBI Headquarters and the San Diego Field Office. No records responsive to your FOIPA request were located by a search of the automated indices."

It appears from Mr. Hardy's letter that the FBI searched only "main" files, not "reference" or other files, including but not limited to electronic surveillance files or indices (e.g., ELSUR).<sup>1</sup> Such a search is inadequate.

An agency must prove beyond material doubt that it conducted a search reasonably calculated to uncover all relevant documents. *Welsberg v. Department of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). A search of the "main files in the central records system," standing alone, is not reasonably calculated to uncover all relevant

<sup>1</sup> See, e.g., *Wheeler v. Department of Justice*, 403 F. Supp. 2d 1, 4 n.3 (D.D.C. 2005) ("The ELSUR indices are a separate system of records from the CRS.")

Freedom of Information Appeal  
September 8, 2008  
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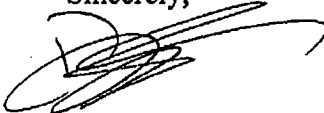
documents. *See, e.g., Wheeler v. Department of Justice*, 403 F. Supp. 2d 1, 11 (D.D.C. 2005) (without proof of "search for cross references ... it cannot be said with any certainty" that search was reasonable); *Edmonds v. FBI*, 272 F. Supp. 2d 35, 58 (D.D.C. 2003) (FBI search of both its "Central Records System (CRS) and its Electronic Surveillance index (ELSUR)" deemed reasonable) *Canning v. Department of Justice*, 848 F. Supp. 1037, 1050 (D.D.C. 1994) (same); cf. *Blanton v. U.S. Dept. of Justice*, 63 F. Supp. 2d 35, 41-42 (D.D.C. 1999) ("Because the cross-reference checks would identify any records referring to Blanton in the informant files, the FBI was not required to go to informant files themselves and search further").

Accordingly, at a minimum, "the FBI must search ELSUR in addition to CRS in response to a general FOIA request for which ELSUR may be relevant." *Campbell v. Department of Justice*, 164 F.3d 20, 28 (D.C. Cir. 1998). Because the above-referenced request specifically pertains to surveillance, among other issues, ELSUR records and/or indices are clearly relevant to the request and must be searched, together with any other files or indices likely to contain responsive records. *See id.* ("an agency 'cannot limit its search to only one record system if there are others that are likely to turn up the information requested'").

Indeed, a search of both CSR and ELSUR (which was not apparently done in this case) may be inadequate. *See Singh v. FBI*, \_\_\_ F. Supp. 2d \_\_\_, 2008 WL 4056223, \*1 (D.D.C. 2008) (though "search of FBIHQ's automated indices to its Central Records System files and its Electronic Surveillance Indices 'located no records,'" a "further search" after administrative appeal located additional responsive records).

For the foregoing reasons, the FBI did not conduct a reasonable search in response to the above-referenced request, and it is respectfully requested that the matter be remanded to conduct a complete search for relevant records.

Sincerely,



David Blair-Loy  
Legal Director





NOV 03 2008

U.S. Department of Justice

Office of Information and Privacy

Telephone: (202) 514-3642

Washington, D.C. 20530

OCT 28 2008

David Blair-Loy, Esq.  
American Civil Liberties Union  
San Diego and Imperial Counties  
Post Office Box 87131  
San Diego, CA 92138-7131

Re: Appeal No. 08-2751  
Request No. 1117081  
KM:CGG

Dear Mr. Blair-Loy:

You appealed on behalf of your client, Edgar D. Hopida, from the action of the San Diego Field Office of the Federal Bureau of Investigation on his request for access to records pertaining to himself.

After carefully considering your appeal, and as a result of discussions between FBI personnel and a member of my staff, I am remanding your client's request for a further search for responsive records. If the FBI locates records, it will send any and all releasable records to you directly, subject to any fees. Your client may appeal any future adverse determination made by the FBI. If your client would like to inquire about the status of his remanded request, please contact the FBI directly.

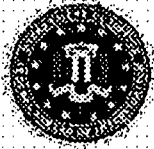
If your client is dissatisfied with my action on your appeal, he may file a lawsuit in accordance with 5 U.S.C. § 552(a)(4)(B).

Sincerely,

Janice Galli McLeod *for*  
Associate Director







FEB 23 2009  
FEB 21 2009

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

February 13, 2009

MR. DAVID BLAIR-LOY  
ACLU FOUNDATION OF SAN DIEGO AND IMPERIAL  
COUNTIES  
POST OFFICE BOX 87131  
SAN DIEGO, CA 92138

Request No: 1117081-001

Subject: HOPIDA, EDGAR DELROSARIO

Dear Mr. Blair-Loy:

The purpose of this letter is to advise you of the status of your pending Freedom of Information/Privacy Acts (FOIPA) request at the Federal Bureau of Investigation (FBI). Currently the FBI is searching for, retrieving, scanning, and evaluating files that may be responsive to your request. Many factors may contribute to the time required to process your request; however, the greatest single factor is the number of documents associated with your request.

Once your files have been evaluated as potentially responsive, your request will be forwarded to the "perfected backlog", where your request will wait for assignment to an analyst.

You may inquire as to the status of your request by calling the FBI's FOIPA Public Information Center at 540-868-4593.

Sincerely yours,

A handwritten signature in black ink, appearing to read "D. Hardy", is written over a horizontal line.

David M. Hardy  
Section Chief,  
Record/Information Dissemination Section  
Records Management Division





AUG 13 2008

U.S. Department of Justice

Federal Bureau of Investigation  
Washington, D.C. 20535

August 11, 2008

MR. DAVID BLAIR-LOY  
ACLU FOUNDATION OF SAN DIEGO AND IMPERIAL COUNTIES  
POST OFFICE BOX 87131  
SAN DIEGO, CA 92138 7131

Request No.: 1117078- 000  
Subject: COUNCIL ON AMERICAN ISLAMIC  
RELATIONS

Dear Mr. Blair-Loy:

This is in reference to your Freedom of Information-Privacy Acts (FOIPA) request.

We have located approximately 805 pages which are potentially responsive to your request. Pursuant to Title 28, Code of Federal Regulations (CFR), Sections 16.11 and 16.49, there is a duplication fee of ten cents per page. The first 100 pages will be provided to you free of charge. Regulations require us to notify requesters when anticipated charges exceed \$25, and if all of the pages are released, you will owe \$ 70.50 in duplication fees. Please remember this is only an estimate, and if some of the pages are withheld or are not identifiable with your subject, the actual charges could be less.

You may want to consider reducing the scope of your request. This would allow you to lower your costs and hasten the receipt of your information. To streamline our operation, we divide our requests into three tracks based on the amount of material to be processed: small (1-500 pages); medium (501-2500 pages) and large (2501 or more pages), with the small track having the fastest rate of processing. To accelerate the processing of your request, you must reduce the pages to be processed to 500 pages or less. Please let us know in writing if you are interested in discussing the possibility of reducing the scope of your request or if you are willing to pay the estimated duplication cost indicated in the above paragraph. Your written response should provide a telephone number where you can be reached between the hours of 8:00 a.m. and 5:00 p.m., EST. You may also fax your response to the following number: 540-868-4996. Attention: Work Processing Unit. You must include the FOIPA request number in any communication regarding this matter.

As stated previously, the cost indicated is only an estimate, therefore, no payment should be made at this time.

Sincerely yours,

David M. Hardy  
Section Chief  
Record/Information  
Dissemination Section  
Records Management Division





PO Box 87131  
San Diego, CA 92138-7131  
T: 619-232-2121  
F: 619-232-0036  
www.aclusandiego.org

August 18, 2008

Mr. David M. Hardy  
Section Chief  
Record Information/Dissemination Section  
170 Marcel Drive  
Winchester, VA 22602-4843  
Facsimile: (540) 868-4996

Re: Request No. 1117078-000, Council on American Islamic Relations

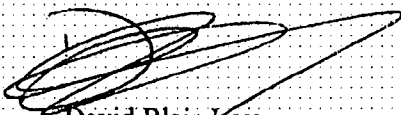
Dear Mr. Hardy:

Thank you for your letter of August 11, 2008. I appreciate the offer, but I do not wish to reduce the scope of the request. My FOIA request of July 14, 2008 included a request for expedited processing, which to my knowledge has been neither granted nor denied. I look forward to a resolution of the request for expedited processing.

With respect to copying charges, my FOIA request included a request to reduce or waive all document duplication fees. To my knowledge, that request has been neither granted nor denied. I look forward to a resolution of that request. If the request to waive fees is ultimately denied, my office would be willing to pay estimated duplication costs of \$70.50, but such willingness does not forfeit the request for waiver of duplication fees.

Thank you for your help with this matter. Please call me at 619.232.2121, ext. 23 if you have any questions.

Sincerely,



David Blair-Loy  
Legal Director



JS 44 (Rev. 12/07)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

COUNCIL ON AMERICAN-ISLAMIC RELATIONS,  
CALIFORNIA; EDGAR HOPIA;

## DEFENDANTS

FEDERAL BUREAU OF INVESTIGATION, DEPARTMENT OF  
JUSTICE,

2009 APR 20 PM 3:04

(b) County of Residence of First Listed Plaintiff San Diego  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

BY [Signature] DEPUTY

(c) Attorney's (Firm Name, Address, and Telephone Number)

Craig E. Countryman, Esq.  
Fish & Richardson, P.C..  
12390 El Camino Real  
San Diego, CA 92130

'09 CV 0 823 IEG

CAB

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☒ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- For Diversity Cases Only
- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | PTF                        | DEF                        |   | PTF                        | DEF                        |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus—Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities—Employment <input type="checkbox"/> 446 Amer. w/Disabilities—Other <input checked="" type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

5 U.S.C. § 552

Brief description of cause:

This civil action seeks an order that Defendants immediately respond to Plaintiffs' request for documents under the Freedom of Information Act, conduct a thorough search for the requested documents, produce all documents uncovered by the search, and waive all processing fees related to Plaintiffs' request..

## VI. CAUSE OF ACTION

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23  
 DEMAND \$

CHECK YES only if demanded in complaint:  
 JURY DEMAND: ☐ Yes ☒ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

April 20, 2009

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIVED #

AMOUNT

350.

APPLYING IFP

JUDGE

MAG. JUDGE

American LegalNet, Inc.  
 www.FormsWorkflow.com

**UNITED STATES  
DISTRICT COURT**  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION

**# 162265 - SR**

**April 20, 2009  
15:06:26**

**Civ Fil Non-Pris**

USAO #: 09CV0823

Judge.: IRMA E GONZALEZ

Amount.: \$350.00 CK

Check#: BC#6148

**Total-> \$350.00**

FROM: COUNCIL ON AMERICAN-ISLAMIC  
RELATIONS V. FBI  
CIVIL FILING